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VIA FACSIMILE (526-1146) and U.S. MAIL

Marlene Kirchner, Secretary
Missouri Clean Water Commission
205 Jefferson St., 9th Floor
P.O. Box 176
Jefferson City, MO 65102-0176

Re: Comment on RIR for WQS and Effluent Limitations Regulations

Dear Ms. Kirchner:

I am writing the Missouri Department of Natural Resources' Water Protection Program and Missouri Clean Water Commission on behalf of my client Missouri Ag Industries Council, Inc. (Mo-Ag). Mo-Ag hereby submits comments on the Department of Natural Resources' Regulatory Impact Report (RIR) on the proposed changes to the effluent limitation regulation and the Water Quality Standards regulations found at 10 C.S.R. 20-7.015 and 10 C.S.R. 20-7.031, respectively. As you are aware, Mo-Ag is the trade association that represents Missouri's Agribusiness community.

Mo-Ag has been provided with a copy of the Missouri Chamber of Commerce and Industry comment letter submitted by Mr. Richard Rocha. Mo-Ag supports and incorporates by reference the Chamber of Commerce's comments. However, Mo-Ag has additional comments and would like to make herein below.

The MDNR has proposed to eliminate the mixing zone in Class C streams and streams with a seven (7)-day Q_{10} of 0.1 csf or less. The department suggests that such streams do not have adequate mixing to protect the streams under all hydrologic conditions. However, the department submits no evidence to support this proposition. Moreover, the department does not suggest any alternatives to this regulation change. In addition, the department does not make a distinction between ditches with no flow and streams with a seven (7)-day Q_{10} of 0.1 csf or less.

Economically it does not make sense to protect ditches that receive effluent that are otherwise dry and where natural attenuation of water contaminants occurs before reaching a Class C stream. One alternative approach to this regulation is to identify Class C streams that

have not attained their beneficial uses and approach individual treatment facilities to investigate additional treatment to protect beneficial uses of those impaired streams.

One alternative approach to eliminating the mixing zone for Class C or smaller streams is to introduce a new beneficial use for effluent dominated streams. This option has previously been discussed with the department in regards to the Stream Classification Guidelines that have been under review by the department during the last year. Unfortunately, the department has chosen not to suggest this alternative in the RIR. Mo-Ag suggests the RIR be amended to discuss this alternative approach and how it might achieve the same purpose while maintaining an appropriate level of water quality in the small streams and ditches.

The MDNR proposal requires environmental protections that are overprotective and impose a severe economic burden on small business or POTWs located high up in watersheds. Moreover, the RIR did not include an economic analysis of eliminating the mixing zone for Class C or smaller streams. By law, the RIR should include such an assessment.

When the RIR was originally published, it was not accompanied with the draft regulations. In order to put the RIR in perspective, the draft regulations are an essential component for anyone wishing to conduct a thorough review and assessment of the RIR. In this respect, the RIR did not comply with state law.

The department proposes to eventually eliminate the bacterial "high flow exemption" applicable to WBCR streams during periods of storm water run off. The department proposes to only allow a high flow exemption after a catastrophic storm event defined as a 25-year, 24-hour storm event. The department proposes no other alternatives although several are discussed in the appendices including minutes from stakeholder meetings. Without a discussion of the alternatives, the RIR does not comply with state law nor does it provide insight into the MDNR's reasoning why this regulation change is proposed.

An alternative the MDNR should consider is a high flow exemption any time that the stream exceeds 125% of normal flow or alternatively, one foot above the normal high water mark. It is clearly arbitrary to assume that people only stop swimming in streams after a catastrophic storm that occurs once every 25 years. A more reasonable storm event must be proposed by the department or otherwise this draft regulation is clearly arbitrary and capricious.

Concerning the assignment of WBCR to all classified waterbodies, the department talks about "countervailing risks" which obviously include the addition of chlorine to Missouri's waters. However, there is no discussion of the adverse effects of by-products of dechlorination that are often times necessary to emit and achieve chlorine effluent limitations.

I was disappointed that the department stated in paragraph 14 found on page 22 that they did not consider any other regulatory approaches that could produce a comparable environmental outcome. Furthermore, the department did not consider any other "alternative method for achieving the purpose" of the proposed regulations but instead merely offers EPA guidance as the sole support of these regulations while not discussing other alternative methods. In this respect, RIR is deficient and violates state law.

The department proposes to amend the dissolved oxygen regulation by deleting three sections and adding a new subsection which explains a method of developing site-specific criteria. On page 30 of the RIR document the department includes minutes from an April 17, 2001 stakeholder meeting at which the department suggests a DO criteria of 3.0 mg/l for unclassified streams. This proposed change was suggested "by staff." What happened to this suggestion and why did the MDNR change its position in the final RIR? This radical change in the department's position is not explained in the RIR. Obviously, the 3.0 mg/l option is an alternative approach to this regulation which should and must be included in the RIR. It wasn't and thus the RIR does not comply with state law. Mo-Ag believes that the earlier approach suggested by staff is more reasonable and should be investigated. A process to require the development of site-specific criteria is costly and unfairly shifts the burden to regulated entities to submit a UAA or other study to support what the department already knows, that Missouri's smaller, unclassified streams often times have a DO less than 5.0 mg/l.

The RIR suggests including a proposed amendment that provides for the development and use of anti-degradation implementation procedures. The draft regulation requires that an "anti-degradation implementation procedure shall go through stakeholder development and the finalized procedure shall be referenced by this rule before it becomes effective." This language is wholly unnecessary until such time as the department actually goes through a stakeholder process and develops procedures. If the anti-degradation regulation found in existing regulation is sufficient, there is no need to propose procedures to actually implement a current regulation that already complies with the requirements of the Clean Water Act.

At the direction of the Clean Water Commission, the department has revised the beneficial use definition for "boating and canoeing." I would recommend changing the title of boating and canoeing to a title that more accurately reflects the definition. I would suggest secondary recreational contact or some other term that implies a secondary use to whole body contact recreation.

Thank you for the opportunity to submit comments.

Sincerely,

NEWMAN, COMLEY & RUTH P.C.

By:



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